IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.Rev.Pet.No. 2993 of 2007()

SC.1606/07 OF ADDL.SESSIONS JUDGE, THRISSUR

REVN. PETITIONER: 1ST ACCUSED:

HARIHARAN,
S/O.REGHUTHAMAN, KAITHAKKATT HOUSE,
MUKKATTUKARA DESOM,
OLLUKKARA VILLAGE.

BY ADV. SRI.NAGARAJ NARAYANAN

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM,

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2993 OF 2007

Dated this the 10th day of August, 2007

O R D E R

The revision petitioner was the 1st accused in S.C.No.40/2006 on the file of the Additional Sessions Court (Fast Track-II), Thrissur. He challenges the order dated 12.6.07 passed by the said court allowing the request of the Public Prosecutor to despatch 10 bottles from each of the four cartons in court for chemical analysis.

2. The case of the prosecution can be summarised as follows:-

On 7.5.2004 the 2nd accused was found driving an autorikshaw with four cartons of Indian Made Foreign Liquor altogether having a total number of 96 bottles belonging to the 3rd accused and the 1st accused(revision petitioner herein) was travelling inside the autorikshaw along with the contraband liquor. The accused has thereby committed an offence punishable under section 55(a) of the Abkari Act.

3. At the time of search and seizure, the detecting officer had taken only four bottles as sample (one bottle from each of the cartons). The final report in this case was filed on 20.7.05. After the decision of this court in ***Krishnankutty Vs. State of Kerala*** [2005 (3) KLT 568] to the effect that sufficient sample in excess of the permissible quantity should be taken from the bottles, the Prosecutor in charge of the case filed the above petition, namely Crl.M.P.No.1606/2007 requesting to forward 10 more bottles from each of the cartons. The prayer initially was to forward five bottles each from each of the cartons and which prayer was amended as 10, presumably in view of the fact that the permissible quantity of IMFL after 2.8.2003 was three litres and each of the bottles in the four cartons had only a capacity of 375 litres and in order to arrive at a quantity in excess of the permissible limit sample in excess of 3 litres had to be taken. Eventhough the request made by the Public Prosecutor was opposed by the accused including the revision petitioner herein, the court below as per the impugned order dated 12.6.07 allowed the request.

Hence, this revision.

4. Eventhough the learned counsel for the revision petitioner re-iterated his objection to the request made by the Public Prosecutor for despatching 10 bottles each from each of the four cartons, I do not think that the accused have been seriously prejudiced by the impugned order. All that the court has done is to despatch for analysis sufficient number of sample from each of the cartons produced in the case and kept in the court. The trial of the court is yet to be started and the revision petitioner cannot plead any prejudice or failure of justice in the act of the court in allowing the request of the prosecution. It goes without saying that whatever defences are available to the accused arising out of the despatch of additional samples pursuant to the impugned order can be raised by them during trial.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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